

1 Adam Keats (SBN 191157)
2 LAW OFFICE OF ADAM KEATS, PC
3 303 Sacramento St., 2nd Floor
4 San Francisco, CA 94111
5 Tel: 415-430-9403
6 Email: adam@keatslaw.org
7 *Attorney for Bring Back the Kern, Kern River*
8 *Parkway Foundation, Kern Audubon Society,*
9 *Sierra Club, and Center for Biological Diversity*

10 William McKinnon (SBN 129329)
11 ATTORNEY AT LAW
12 952 School St., PMB 316
13 Napa, CA 94559
14 Tel: 530-575-5335
15 Email: legal@waterauditca.org
16 *Attorney for Water Audit California*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF KERN**

14 BRING BACK THE KERN, WATER AUDIT
15 CALIFORNIA, KERN RIVER PARKWAY
16 FOUNDATION, KERN AUDUBON
17 SOCIETY, SIERRA CLUB, and CENTER FOR
18 BIOLOGICAL DIVERSITY,

17 Plaintiffs and Petitioners,

18 vs.

19 CITY OF BAKERSFIELD
20 and DOES 1 through 500,

21 Defendants and Respondents,

22 BUENA VISTA WATER STORAGE
23 DISTRICT, KERN DELTA WATER
24 DISTRICT, NORTH KERN WATER
25 STORAGE DISTRICT, ROSEDALE-RIO
26 BRAVO WATER STORAGE DISTRICT,
27 KERN COUNTY WATER AGENCY, and
28 DOES 501-999,

Real Parties in Interest.

Case No.: BCV-22-103220

**VERIFIED SECOND AMENDED
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE**

Cal. Const. Art. X, sec. 2;
Public Trust Doctrine
Fish & G. Code, §§ 5901, 5937, 5948;
Civ. Code, §§ 3479, 3480;
Pub. Resources Code, § 6009.1; and
Code Civ. Proc, §§ 526, 527, 1060, 1085, 1103.

Dept.: 8
Judge: Hon. Gregory Pulskamp

TABLE OF CONTENTS

1		
2	INTRODUCTION	3
3	PARTIES	3
4	VENUE AND JURISDICTION	7
5	LEGAL BACKGROUND	8
6	Public Trust Doctrine	8
7	California Constitution, Article X, Section 2	10
8	California Fish and Game Code, § 5901	11
9	California Fish and Game Code, § 5937	11
10	California Fish and Game Code, § 5948	12
11	Public Resources Code, § 6009.1	12
12	Civil Code, sections 3479, 3480, and 3490	14
13	FACTUAL BACKGROUND	14
14	FIRST CAUSE OF ACTION	
15	Writ of Mandate and/or Prohibition – Code Civ. Proc. §§ 1085 and/or 1103	21
16	SECOND CAUSE OF ACTION	
17	Declaratory Relief – Code Civ. Proc. § 1060	25
18	THIRD CAUSE OF ACTION	
19	Injunctive Relief – Code Civ. Proc. §§ 526 and 527	
20	Violations of Article X of the California Constitution	28
21	FOURTH CAUSE OF ACTION	
22	Writ of Mandate and/or Prohibition – Code Civ. Proc. §§ 1085 and 1103	
23	Breach of Trustee Duties	30
24	FIFTH CAUSE OF ACTION	
25	Injunctive Relief – Code Civ. Proc. §§ 526, 527	
26	Public Nuisance – Civil Code §§ 3479 and 3480	32
27	PRAYER FOR RELIEF	35
28		

1 **INTRODUCTION**

2 1. Plaintiffs and Petitioners Bring Back the Kern, Water Audit California, Kern River
3 Parkway Foundation, Kern Audubon Society, Sierra Club, and Center for Biological Diversity bring
4 this action on their own behalf, on behalf of the general public, and in the public interest.

5 2. Defendant and Respondent City of Bakersfield (“City”) regularly diverts water from the
6 Kern River through its operation of several diversion structures within the river’s channel. The City
7 diverts this water on its own behalf and on behalf of other parties, including the Real Parties in Interest
8 named herein, pursuant to water rights held by those parties and/or pursuant to contractual agreements
9 with those parties.

10 3. The City’s diversion of Kern River water for the city’s use and on behalf of other water
11 rights and contract holders regularly results in the complete dewatering of portions of the Kern River
12 described in detail below, herein the “Subject Reach.”

13 4. The City diverts water from the Kern River without having satisfied its duties under the
14 California Constitution, the Public Resources Code, the Fish and Game Code, the California Civil
15 Code, and the Public Trust Doctrine, to protect various resources on behalf of the people of California.

16 5. The City has created a public nuisance by diverting water from the Kern River and its
17 tributary streams without any analysis of the impacts on public trust uses and resources in violation of
18 statutory and common law obligations as set forth below.

19 6. The City’s conduct is a substantial factor in causing Plaintiffs’ harm. Plaintiffs did not
20 consent to the City’s conduct.

21 7. Plaintiffs seek to, with judicial assistance, improve the City’s conduct to comport with
22 the law.

23 **PARTIES**

24 8. Plaintiff and Petitioner Bring Back the Kern is a non-profit organization formed by local
25 residents with the mission of restoring flowing water in the Kern River through the City of
26 Bakersfield. Bring Back the Kern works to achieve this through building awareness among the public
27 and encouraging decision makers to change the status quo and put more water in the river. Bring Back
28 the Kern brings this action in its own behalf, and as a private attorney general advocating for the

1 interests of the people of California.

2 9. Plaintiff and Petitioner Water Audit California is a California public benefit corporation
3 with a mission of advocacy for the public trust. Water Audit California is organized and existing under
4 the laws of the State of California. Water Audit California is a “person” under California Corporations
5 Code Sections 18 (“‘Person’ includes a corporation as well as a natural person”); 15901.02(y)
6 (“‘Person’ means an individual . . . corporation . . .”); and 25013 (“‘Person’ means an individual, a
7 corporation...”). Water Audit California brings this action in its own behalf, and as a private attorney
8 general advocating for the interests of the people of California.

9 10. Plaintiff and Petitioner Kern River Parkway Foundation is a local non-profit
10 organization working to protect, preserve, and restore the natural riparian and wildlife habitat of the
11 Kern River. The Foundation works with county, city, and community stakeholders to develop and
12 maintain public open space, structures, monuments, and parks that preserve and beautify the Kern
13 River and supports projects that advance educational and scientific knowledge of the Kern River. Kern
14 River Parkway Foundation brings this action in its own behalf, and as a private attorney general
15 advocating for the interests of the people of California.

16 11. Plaintiff and Petitioner Kern Audubon Society is a local, independent chapter of the
17 Audubon Society, founded in Bakersfield in 1973 and incorporated in 1979, that works to educate the
18 public about the importance of birds and to protect important bird habitat areas as well as sensitive
19 bird species across Kern County. The Kern River through Bakersfield is a major factor in attracting
20 birds traveling in the Pacific Flyway. Kern Audubon Society has published a popular birding map of
21 the Kern River from the mouth of the Kern Canyon to Enos Lane, including local groundwater
22 recharge basins. Kern Audubon Society has hundreds of members, primarily based in the Bakersfield
23 area who are personally affected by the lack of a flowing river. Kern Audubon Society brings this
24 action in its own behalf, and as a private attorney general advocating for the interests of the people of
25 California.

26 12. Plaintiff and Petitioner Sierra Club is a non-profit organization that advocates for
27 environmental and social justice issues. Its local chapter, the Kern-Kaweah Chapter, advocates for
28 these interests in the southern San Joaquin Valley. The Sierra Club works to hold county and city

1 government accountable for actions causing harm to habitat, sensitive species, and disadvantaged
2 communities. The Kern-Kaweah Chapter of the club has several thousand members, a significant
3 portion of whom live in the Bakersfield area in close proximity to the dried-up Kern River. Sierra Club
4 brings this action in its own behalf, and as a private attorney general advocating for the interests of the
5 people of California.

6 13. Plaintiff and Petitioner Center for Biological Diversity is a non-profit organization
7 dedicated to saving life on earth through science, law, and creative media, with a focus on protecting
8 the lands, waters and climate that wild animal and plant species need to survive. The Center has
9 offices in California and other states and has more than 1.7 million members and online activists,
10 including members in and around Bakersfield and the Kern River. The Center has a particular interest
11 in protecting, restoring, and enhancing the public trust resources of the Kern River, and returning
12 flows in the lower Kern River to a more natural regime for the benefit of people, wildlife, and native
13 ecosystems. Center for Biological Diversity brings this action in its own behalf, and as a private
14 attorney general advocating for the interests of the people of California.

15 14. Defendant and respondent City is a city authorized by the California Constitution and as
16 set forth in Government Code section 3400, et seq.

17 15. The City is a legal subdivision of the state; references to the “state” includes cities.
18 (Gov. Code, §§ 53208.5, 53217.5 & 53060.1 [setting various limits on benefits for “members of the
19 legislative bodies of all political subdivisions of the state, including charter cities and charter
20 counties”], 8557, 8698, 12650 & 12424 [“political subdivision” includes “any city, city and county
21 [or] county”], 37364, subd. (e) [“[t]he provisions of this section shall apply to all cities, including
22 charter cities”]; *City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 912.)

23 16. Plaintiffs do not know the true names of defendants and respondents DOES 1 to 500,
24 inclusive, and therefore sues them with these fictitious names. Plaintiffs are informed and believe, and
25 based on such information and belief, allege that each of these parties is in some manner legally
26 responsible for the events and happenings alleged herein. Plaintiffs are further informed and believe,
27 and based on such information and belief allege, that at all times mentioned the respondents were the
28 partners, agents, coventurers, and/or employees of their co-respondents and defendants, and in doing

1 the things herein alleged were acting within the course and scope of such agency and employment.
2 Alternatively, the DOES have acted in reliance on permission granted by the City, and their future
3 action must be equitably amended to avoid injury to the public trust. Alternatively, the DOES have
4 acted without permission, and their future action must be equitably amended to avoid injury to the
5 public trust. Plaintiffs will seek leave to amend to insert the true names of the DOES when such parties
6 have been identified.

7 17. The City and DOE defendants/respondents will collectively be referred to as
8 “Defendants.”

9 18. Real Party in Interest BUENA VISTA WATER STORAGE DISTRICT is a Water
10 Storage District formed under the California Water Storage District Law, Water Code section 39000,
11 *et seq.* Plaintiffs are informed and believe that Buena Vista Water Storage District holds a water right
12 or contractual interest, or both, in some water that is diverted from the Kern River by the City, and
13 therefore may have an interest in this litigation.

14 19. Real Party in Interest KERN DELTA WATER DISTRICT is a Water District formed
15 under Water Code section 34000, *et seq.* Plaintiffs are informed and believe that Kern Delta Water
16 District holds a water right or contractual interest, or both, in some water that is diverted from the
17 Kern River by the City, and may hold an ownership interest in the Rocky Point Weir and therefore
18 may have an interest in this litigation.

19 20. Real Party in Interest NORTH KERN WATER STORAGE DISTRICT is a Water
20 Storage District formed under the California Water Storage District Law, Water Code section 39000,
21 *et seq.* Plaintiffs are informed and believe that North Kern Water Storage District holds a water right
22 or contractual interest, or both, in some water that is diverted from the Kern River by the City, and
23 may hold an ownership interest in the Beardsley Weir and/or the Calloway Weir, and therefore may
24 have an interest in this litigation.

25 21. Real Party in Interest ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT is a
26 Water Storage District formed under the California Water Storage District Law, Water Code section
27 39000, *et seq.* Plaintiffs are informed and believe that Rosedale-Rio Bravo Water District holds a
28 water right or contractual interest, or both, in some water that is diverted from the Kern River by the

1 City, and therefore may have an interest in this litigation.

2 22. Real Party in Interest KERN COUNTY WATER AGENCY is a political subdivision of
3 the State of California, organized and existing under the Kern County Water Agency Act. Plaintiffs are
4 informed and believe that Kern County Water Agency holds a water right in some water that may
5 possibly flow in the Kern River through the City of Bakersfield, and therefore may have an interest in
6 this litigation.

7 23. The Buena Vista Water Storage District, Kern Delta Water District, North Kern Water
8 Storage District, Rosedale-Rio Bravo Water Storage District and the Kern County Water Agency shall
9 be collectively referred to herein as “Real Parties.”

10 24. DOES 501 to 999, inclusive, are persons or entities presently unknown to the Plaintiffs
11 who may claim some interest as a real party in interest in the acts that are a subject of this action.
12 Plaintiffs will seek leave to amend this petition to show the true names and capacities of DOES 501 to
13 999 when such names and capacities become known.

14 **VENUE & JURISDICTION**

15 25. The venue is proper in this court under the California Code of Civil Procedure, section
16 395, subdivision (a) because the subject reach of the Kern River, the associated diversion works, the
17 waters discussed herein, and the offices of the City and Real Parties, are all within the County of Kern,
18 California.

19 26. Plaintiffs seek an injunction, (Code Civ. Proc., §§ 526, 527) declaratory relief (Code
20 Civ. Proc. § 1060), a writ of mandate (Code Civ. Proc. § 1085), and/or a writ of prohibition (Code Civ.
21 Proc. § 1103). Each of these is within the jurisdiction of this court. (California Constitution art. VI, §§
22 1 & 4.)

23 27. This Court has subject matter jurisdiction because the causes of action arise, inter alia,
24 under the California Fish and Game Code, the California Water Code, the Code of Civil Procedure, the
25 California Civil Code, the California Constitution, and the California Public Trust Doctrine.

26 28. Plaintiffs have performed all conditions precedent to filing suit or is excused from such
27 conditions. (Wat. Code, § 1851.)

28 29. Plaintiffs have given notice to the City of its intended litigation.

LEGAL BACKGROUND

Public Trust Doctrine

30. The courts have recognized the State’s responsibility to protect public trust uses whenever feasible. (See, e.g., *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 435; *California Trout, Inc. v. State Water Resources Control Bd. (Cal. Trout I)* (1989) 207 Cal.App.3d 585, 631; *California Trout, Inc. v. Superior Court (Cal. Trout II)* (1990) 218 Cal.App.3d 187, 289.)

31. Both the City and the Water Districts are subdivisions of the state. They “... share[] responsibility for protecting our natural resources and may not approve of destructive activities without giving due regard to the preservation of those resources.” (*Center for Biological Diversity, Inc. v. FPL Group, Inc. (FPL Group)* (2008) 166 Cal.App.4th 1349, 1371 fn. 19.)

32. “The core of the public trust doctrine is the state’s authority as sovereign to exercise a continuous supervision and control over the navigable waters of the state and the lands underlying those waters.” (*Audubon, supra* 33 Cal.3d 419, 425.) Over a century ago the U.S. Supreme Court defined the public trust as property that “is a subject of concern to the whole people of the state.” (*Illinois Central R.R. Co. v. Illinois* (1892) 146 U.S. 387, 454, 455.) The public trust provides that certain natural resources, including water resources, are held by the state “as trustee of a public trust for the benefit of the people.” (*Audubon, supra*, 33 Cal.3d 419, 434.)

33. The state as sovereign is primarily responsible for administration of the public trust. The City is a trustee for the public trust in all actions and decisions that include or implicate public trust interests.

34. Citizens may enforce a state agency’s affirmative duty to comply with the public trust doctrine in court. (*Audubon, supra*, 33 Cal.3d 419, 431 n.11, citing *Marks v. Whitney*, 6 Cal.3d at pp. 261–62; *see also FPL Group, supra*, 166 Cal.App.4th 1349, 1366 [“the public retains the right to bring actions to enforce the trust when public agencies fail to discharge their duty”].)

35. There are two distinct public trust doctrines. First is the common law doctrine, which involves the government’s affirmative duty to take the public trust into account in the planning and allocation of water resources. The second is a public trust duty derived from statute, for example: Fish and Game Code, including section 5901; section 5937; section 711.7, subd. (a) [“The fish and wildlife

1 resources are held in trust for the people of the state by and through the department [of Fish and
2 Game].”]; section 1600 [“The Legislature finds and declares that the protection and conservation of
3 the fish and wildlife resources of this state are of utmost public interest. Fish and wildlife are the
4 property of the people and provide a major contribution to the economy of the state, as well as
5 providing a significant part of the people's food supply; therefore their conservation is a proper
6 responsibility of the state.”]; section 1801 [“It is hereby declared to be the policy of the state to
7 encourage the preservation, conservation, and maintenance of wildlife resources under the jurisdiction
8 and influence of the state. This policy shall include the following objectives: [¶] . . . [¶] (b) To provide
9 for the beneficial use and enjoyment of wildlife by all citizens of the state, [¶] (c) To perpetuate all
10 species of wildlife for their intrinsic and ecological values, as well as for their direct benefits to all
11 persons. . . .”]; section 1802; section 2000; section 2052; section 3503.5; section 3511; section 3513;
12 section 3800; and section 12000. (See *FPL Group*, supra, 166 Cal.App.4th 1349, 1363-64.)

13 36. The public trust doctrine serves the function in an integrated system of preserving the
14 continuing sovereign power of the state to protect public trust uses, a power which precludes anyone
15 from acquiring a vested right to harm the public trust, and it imposes a continuing duty on the state to
16 take such uses into account in allocating water resources. (*Audubon*, supra, 33 Cal.3d 419, 452.)

17 37. No party can acquire a vested right to appropriate water in a manner harmful to public
18 trust interests and the state has “an affirmative duty” to take the public trust into account in regulating
19 water use by protecting public trust uses whenever feasible. (*Audubon*, supra, 33 Cal.3d 419, 446–
20 447.)

21 38. A trustee for the public trust has, *inter alia*, a duty to administer the trust solely in the
22 interest of the beneficiaries; the duty to act impartially in managing the trust property; the duty to not
23 use or deal with trust property for the trustee's own profit or for any other purpose unconnected with
24 the trust, and to not take part in a transaction in which the trustee has an interest adverse to the
25 beneficiaries. (Public Resources Code, section 6009.1)

26 39. To the extent that the City or Real Parties own or control the weirs (dams) and are
27 therefore deemed “owners” under the law, each of those parties are trustees who have a duty to
28 perform the conduct enumerated in Public Resources Code, section 6009.1.

1 40. The public trust doctrine applies to all water rights, including riparian and pre-1914
2 appropriator rights. (*United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82,
3 106 [in *Audubon* “the court determined that no one has a vested right to use water in a manner harmful
4 to the state's waters”]; *El Dorado Irrigation District v. State Water Resources Control Board* (2006)
5 142 Cal.App.4th 937, 966, [“when the public trust doctrine clashes with the rule of priority, the rule of
6 priority must yield”].)

7 41. Any water right priorities must yield to the unreasonable use or violation of public trust
8 values. The subversion of a water right priority is justified if enforcing that priority will lead to the
9 unreasonable use of water or result in harms to values protected by the public trust. (*El Dorado*, supra,
10 142 Cal.App.4th 937, 967, as cited in *Light v. State Water Resources Control Bd.* (2014) 226
11 Cal.App.4th 1463, 1489.)

12 ***California Constitution, Article X, Section 2***

13 42. Article X, section 2 of the California Constitution states *in part*: “The right to water or to
14 the use or flow of water in or from any natural stream or water course in this State is and shall be
15 limited to such water as shall be reasonably required for the beneficial use to be served, and such right
16 does not and shall not extend to the waste or unreasonable use or unreasonable method of use or
17 unreasonable method of diversion of water.”

18 43. The Supreme Court has held that Article X, section 2 “dictates the basic principles
19 defining water rights: that no one can have a protectible interest in the unreasonable use of water, and
20 that holders of water rights must use water reasonably and beneficially.” (*City of Barstow v. Mojave*
21 *Water Agency* (2000) 23 Cal.4th 1224, 1242.)

22 44. “‘Beneficial use’ and ‘reasonable use’ are two separate requirements, both of which
23 must be met.” (*Santa Barbara Channelkeeper v. City of San Buenaventura* (2018) 19 Cal.App.5th
24 1176, 1185.)

25 45. “‘What constitutes reasonable use is case-specific. California courts have never defined
26 ... what constitutes an unreasonable use of water, perhaps because the reasonableness of any particular
27 use depends largely on the circumstances. ... The inquiry is fact-specific, and the answer may change
28 over time. What may be a reasonable beneficial use, where water is present in excess of all needs,

1 would not be a reasonable beneficial use in an area of great scarcity and great need.” (*Ibid*, internal
2 quotation omitted.)

3 46. Water Code, section 1243 provides that the “use of water for recreation and preservation
4 and enhancement of fish and wildlife resources is a beneficial use.”

5 47. Concurrent jurisdiction allows for environmental groups or others adversely affected by
6 a violation of the public trust to pursue actions in court directly against the violator. Because the
7 limited budgets of the trustee agencies do not allow these agencies to pursue every violation brought to
8 their attention, such assistance is acknowledged to be invaluable in protecting trust resources
9 statewide.

10 ***California Fish and Game Code, § 5901***

11 48. Section 5901 of the Fish and Game Code states “it is unlawful to construct or maintain
12 in any stream [in certain districts, including District 3 1/2] any device or contrivance that prevents,
13 impedes, or tends to prevent or impede, the passing of fish up and down stream.”

14 49. The Kern River is located within District 3 1/2. (Fish & G. Code, § 11009.)

15 50. Section 12025.1, subdivision (a) of the Fish and Game Code states:

16 In addition to any penalties imposed by any other law, a person found to have
17 violated Section 5901 shall be liable for a civil penalty of not more than eight
18 thousand dollars (\$8,000) for each violation. Each day that a violation of Section
19 5901 occurs or continues without a good faith effort by the person to cure the
violation after receiving notice from the department shall constitute a separate
violation.

20 ***California Fish and Game Code, § 5937***

21 51. Section 5937 of the Fish and Game Code states: “The owner of any dam shall allow
22 sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient
23 water to pass over, around or through the dam, to keep in good condition any fish that may be planted
24 or exist below the dam.” (Fish & G. Code § 5937; See *Cal. Trout I*, supra, 207 Cal.App.3d 585, 626.)

25 52. The “good condition” requirement for maintaining fish includes the health of individual
26 fish, the health and diversity of the various populations and their ability to maintain self-sustaining
27 populations, and the health of the entire biotic community.

28 53. Any flow regimen is to maintain in “good condition” populations of fish and other
components of the aquatic ecosystem that may reside, are in transit or may be planted below a dam.

1 54. The criteria for fish in “good condition” has been established in case law. It includes
2 1) the health of individuals, fish are healthy, free of disease, parasites, etc., and have reasonable
3 growth rates with adequate habitat; 2) diversity and abundance of aquatic populations, diversity of age
4 class, sufficient habitat to support all life stages and support self-sustaining populations; 3) the
5 community, its overall health including co-evolved species and the health of the aquatic ecosystem at
6 several trophic levels. (see Bear Creek- SWRCB Order 95-4 at 18 to 22, 1995; *Putah Creek v. Solano*
7 *Irrigation 7 CSPA-294 District*, Sacramento Superior Court No. CV515766, April 8, 1996; *Cal. Trout*
8 *I*, supra, 207 Cal.App.3d 585, *Cal. Trout II*, supra, 218 Cal.App.3d 187; and State Board Order WR
9 95-17, Lagunitas Creek, October 1995. Also see Moyle, et al. 1998.)

10 55. “Compulsory compliance with a rule requiring the release of sufficient water to keep
11 fish alive necessarily limits the water available for appropriation for other uses. Where that affects a
12 reduction in the amount that otherwise might be appropriated, [section 5937] operates as a legislative
13 choice among competing uses of water.” (*Cal. Trout I*, supra, 207 Cal.App.3d 585, 601.)

14 56. “Owner” is defined as the entity “owning, controlling, or operating a dam or pipe”. (Fish
15 & G. Code, § 5900, subd. (c).) “‘Dam’ includes all artificial obstructions.” (Fish & G. Code, § 5900,
16 subd. (a).)

17 57. Thus, section 5937 imposes a responsibility on a dam “owner”, not a regulatory agency.

18 ***California Fish and Game Code, § 5948***

19 58. Section 5948 of the Fish and Game Code states: “No person shall cause or having
20 caused, permit to exist any log jam or debris accumulation or any other artificial barrier, except a dam
21 for the storage or diversion of water, public bridges and approaches thereto, groins, jetties, seawalls,
22 breakwaters, bulkheads, wharves and piers permitted by law, and debris from mining operations, in
23 any stream in this State, which will prevent the passing of fish up and down stream or which is
24 deleterious to fish as determined by the commission, subject to review by the courts.”

25 ***Public Resources Code, § 6009.1***

26 59. Public Resources Code, section 6009.1 states in part:

- 27 (a) Granted public trust lands remain subject to the supervision of the state and the state
28 retains its duty to protect the public interest in granted public trust lands.
 (b) The state acts both as the trustor and the representative of the beneficiaries, who are all
 of the people of this state, with regard to public trust lands, and a grantee of public trust

lands, including tidelands and submerged lands, acts as a trustee, with the granted tidelands and submerged lands as the corpus of the trust.

(c) A grantee may fulfill its fiduciary duties as trustee by determining the application of each of the following duties, all of which are applicable under common trust principles:

- (1) The duty of loyalty.
- (2) The duty of care.
- (3) The duty of full disclosure.
- (4) The duty to keep clear and adequate records and accounts.
- (5) The duty to administer the trust solely in the interest of the beneficiaries.
- (6) The duty to act impartially in managing the trust property.
- (7) The duty to not use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, and to not take part in a transaction in which the trustee has an interest adverse to the beneficiaries.
- (8) The duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property.
- (9) The duty to make the trust property productive under the circumstances and in furtherance of the purposes of the trust.
- (10) The duty to keep the trust property separate from other property not subject to the trust and to see that the trust property is designated as property of the trust.
- (11) The duty to take reasonable steps to enforce claims that are part of the trust property.
- (12) The duty to take reasonable steps to defend actions that may result in a loss to the trust.
- (13) The duty to not delegate to others the performance of acts that the trustee can reasonably be required to perform and to not transfer the administration of the trust to a cotrustee. If a trustee has properly delegated a matter to an agent, the trustee has a duty to exercise direct supervision over the performance of the delegated matter.

60. Public Resources Code, section 6009.1, subdivision (d) is a statutory manifestation of the common law duties of a trustee of the public trust. It is a Legislative enumeration of the duties of a public trust trustee.

61. "Granted public trust land" as described in subdivision (a) of section 6009.1 includes all lands granted to the State of California by the United States. "The United States obtained title to all public land in California by the Treaty of Guadalupe Hidalgo in 1848; the treaty did not disturb title to private land. Upon admission to the Union, California obtained legislative jurisdiction over all land except land the federal government expressly reserved therefrom. ... In 1981, the United States owned 47 million acres or 47 percent of California. Twenty million acres were administered by the Forest Service, 16 million acres by the Bureau of Land Management, 4.7 million acres by the Defense Department and 4.5 million acres by the National Park Service." (*United States v. McCrickard* (E.D. Cal. 1996) 957 F. Supp. 1149, 1152, fn. 47 [citations omitted].)

62. As enumerated under Public Resources Code, section 6009.1, a public trust trustee has an affirmative duty to administer the natural resources held by public trust solely in the interest of the

1 people of California. Whether Public Resources Code, section 6009.1 is seen as directly controlling, or
2 as an enumeration of common law duties, the City thus has an independent duty to (a) do no harm; and
3 to (b) follow the instructions of the trustee agency unless excused by judicial process. This duty
4 includes but is not limited to compliance with California law that requires the free passage of fish.

5 ***Civil Code, sections 3479, 3480, and 3490***

6 63. Civil Code, section 3479 states:

7 Anything which is injurious to health, including, but not limited to, the illegal sale
8 of controlled substances, or is indecent or offensive to the senses, or an
9 obstruction to the free use of property, so as to interfere with the comfortable
10 enjoyment of life or property, or unlawfully obstructs the free passage or use, in
11 the customary manner, of any navigable lake, or river, bay, stream, canal, or
12 basin, or any public park, square, street, or highway, is a nuisance.

13 64. Civil Code, section 3480 states:

14 A public nuisance is one which affects at the same time an entire community or
15 neighborhood, or any considerable number of persons, although the extent of the
16 annoyance or damage inflicted upon individuals may be unequal.

17 65. Civil Code, section 3490 states:

18 No lapse of time can legalize a public nuisance amounting to an actual obstruction
19 of public right.

20 (See also *People v. Gold Run etc. Co.* (1884) 66 Cal. 138, 152, *Bowen v. Wendt* (1894)
21 103 Cal. 236, 238.)

22 66. In addition, common law liability for a public nuisance can arise both from the
23 affirmative act of the City impeding the free passage of fish, and from the failure to remedy the
24 problem once it is recognized.

25 **FACTUAL BACKGROUND**

26 67. The Kern River watershed exemplifies the uniqueness of California's biodiversity, as its
27 climatic conditions result in a Mediterranean climate with warm dry summers and cool moist winters.

28 68. Beginning at its headwaters, northwest of Mount Whitney and tributaries that flow in
from around Mount Whitney at 14,505 feet, its outflow is near Bakersfield and historically Buena
Vista Lake in the San Joaquin Valley.

69. The Kern River's watershed includes about 3,612 square miles.

70. The Kern River currently runs approximately 165 miles to Bakersfield and beyond

1 depending on water availability for surface flows.

2 71. Historically, the Kern River took many paths across an alluvial delta on the San Joaquin
3 Valley floor. At the time of white settlement in the 1850s, the Kern River flowed south at what is now
4 Bakersfield, into Kern Lake.

5 72. A flood in 1867 rerouted the river in what is titled “New River.”

6 73. Historically, the Kern River filled two very large but shallow lakes, Kern Lake and
7 Buena Vista Lake, and during very wet years, the river could overflow Buena Vista Lake northward to
8 Tulare Lake, which at times, flowed northward to the San Joaquin River. These lakes and the wetlands
9 that interconnected them were known to be full of abundant fish and they supported large herds of
10 antelope, elk, and thousands of grizzlies. They were also a critical overwintering stopover of the
11 Pacific Flyway, hosting millions of waterfowl each winter before the birds returned to Canada and
12 Alaska for summer breeding.

13 74. Starting in the 1850s and 60s, settlers began to divert flows from the Kern River and to
14 dry up the vast wetlands of the San Joaquin Valley. Under state law, those who reclaimed wetlands or
15 irrigated desert land for agricultural use could take title to the land. This system was abused by the
16 land barons of the time, who found ways around acreage limits to allow them to amass property
17 holdings of hundreds of thousands of acres.

18 75. Expansion in the amount of irrigated acreage and diversion canals in the Kern River
19 alluvial fan coupled with a dry period led to a drying up of the lower Kern River in 1877, initiating a
20 dispute that was eventually resolved by the California Supreme Court in 1886, which held that both
21 prior appropriations and downstream riparian landholders rights to the Kern River were valid. (*Lux v.*
22 *Haggin* (1886) 69 Cal. 255.) This created California’s dual system of appropriative and riparian water
23 rights.

24 76. Rather than wait for the state to reassess all water rights on the Kern River and
25 determine how water would be split between upstream appropriators and downstream riparian rights
26 holders, land barons Henry Miller and James Haggin created the Miller-Haggin Agreement in 1888, a
27 settlement that divided up shares to the Kern River. This agreement forms the basis of what is referred
28 to as the “law of the river.”

1 77. The Miller-Haggin agreement has been expanded and modified several times in the 150
2 years since its signing, including with the 1900 Shaw decree, and amendments to the original
3 agreement in 1930, 1955, and 1964. Neither the original agreement nor any of the subsequent revisions
4 considered impacts to public trust resources of the Kern River.

5 78. In 1976, the City took ownership to some of the rights of Kern River water from the
6 corporate descendent of James Haggin’s land empire, Tenneco West. With this purchase, the City took
7 over ownership and control of the Kern River and the multiple diversion weirs along the river. The
8 City also took over the administration of Kern River water diversions under the historical “law of the
9 river” system, which divided up most, and often all, of the river’s flows between various diverters.
10 Since then, the City has staffed personnel to manage each weir and headgate to deliver water to
11 irrigation districts based on their claimed rights and water orders, as well as ancillary contractual
12 agreements. The City keeps detailed records of these diversions and publishes an annual report of the
13 diversions, summarizing its operation of the Kern River diversion weirs.

14 79. The higher elevation reaches of the river remain ecologically and hydrologically intact
15 due to conservation protections (e.g., Sequoia National Park, Golden Trout Wilderness), Wild and
16 Scenic River designations and remoteness including various wilderness areas, at least until these parts
17 of the river system reach the Lake Isabella reservoir.

18 80. From Lake Isabella, the Kern River flows through the steep and rugged Kern River
19 Canyon. After exiting the canyon, Kern River water starts to be diverted in large quantities, first at the
20 Beardsley Weir, then the Rocky Point Weir, the Calloway Weir, the River Canal Weir, the Bellevue
21 Weir, and the McClung Weir, [“Diversion Structures”], all of which are managed and operated by the
22 City.

23 81. The Diversion Structures are not permitted by law.

24 82. The City diverts Kern River water on behalf of area water districts and on its own
25 behalf. Most of the water diverted by the City is delivered to area water districts and water storage
26 districts for agricultural purposes. These districts either hold water rights to this water or have a
27 contract with the City for delivery of water to which the City holds the rights. A smaller portion of the
28 diversions are for the City’s own use, for municipal purposes.

1 83. The Kern River has sufficiently reliable flows to satisfy the City's current diversions for
2 municipal purposes, while still providing sufficient water to flow downriver through the City year-
3 round. However, the Kern River does not have sufficiently reliable flows to satisfy the City's current
4 diversions for agricultural purposes while still providing sufficient water via the current points of
5 diversion to flow downriver through the City.

6 84. The Diversion Structures, coupled with the natural infiltration into groundwater, reduce
7 the surface flows in the Kern River to the point where the river flows through the City only on very
8 rare occasions.

9 85. The dewatering of reaches of the Kern River, along with increased groundwater
10 pumping in the vicinity of the river by various water districts, has depleted water levels in the
11 groundwater basin.

12 86. The loss of the river has severely diminished and threatened the City's surface and
13 groundwater supply, and resulted in damage and threats to the quality of the river ecosystem and the
14 local environment, including vegetation and fish and wildlife in and around the river, aesthetic and
15 recreational opportunities in and around the river, and air quality in the surrounding area.

16 87. The reduction in riparian and associated wetland and upland habitats has consequently
17 reduced habitat for native wildlife and decreasing their populations.

18 88. Fish (as defined by Fish and Game Code, section 45) are currently found in the areas of
19 the Kern River impacted by the City's actions.

20 89. Historically at least seven native species of finfish occupied the lower Kern: Coastal
21 rainbow trout (*Oncorhynchus mykiss irideus*), Hardhead (*Mylopharodon conocephalus*), Riffle sculpin
22 (*Cottus gulosus*), Sacramento pike minnow (*Ptychocheilus grandis*), Sacramento hitch (*Lavinia*
23 *exilicauda exilicauda*), Sacramento sucker (*Catostomus occidentalis occidentalis*), and Sacramento
24 perch (*Archoplites interruptus*).

25 90. Although the City's diversions have largely extirpated native finfish from the Kern
26 River below the Diversion Structures, finfish can be found in this portion of the river when flows are
27 sufficient.

28 91. If adequate surface flows were maintained within the Kern River through the City,

1 populations of finfish species could be restored.

2 92. The Kern River alluvial fan is one of the best recharge areas in California, as water
3 managers assume 90-94% of water recharged into the aquifer from the Kern River channel can be
4 recovered.

5 93. The Kern River has had an annual average outflow of around 720,000-acre feet since
6 records have been kept starting in the late 19th century. As the southernmost major river of the Sierra
7 Nevada range, it is subject to wide fluctuations in annual precipitation, with some instances of up to 2-
8 million-acre feet and drought years with a tenth of that. The river's median outflow is over 500,000-
9 acre feet.

10 94. A feasible alternative exists to the City's current diversion regime: The City could divert
11 some water further downstream of its existing Diversion Structures, closer to the Kern River's
12 historical terminus.

13 95. Facilities exist downstream of the Diversion Structures that would allow all current
14 recipients of Kern River water diverted by the City to obtain all or most of the water they would
15 otherwise obtain from the City's diversions.

16 96. The end users serviced by the City's existing diversions of the Kern River at the
17 Diversion Structures can be serviced from diversion facilities located downstream.

18 97. The key to servicing the current end users from different diversion points downstream is
19 the Cross Valley Canal (CVC), a bidirectional canal that is capable of taking water upriver, utilizing
20 seven pumping plants along a 22 mile canal from the California Aqueduct on the western side of Kern
21 County and conveying it to the Calloway Canal and Weir near central Bakersfield.

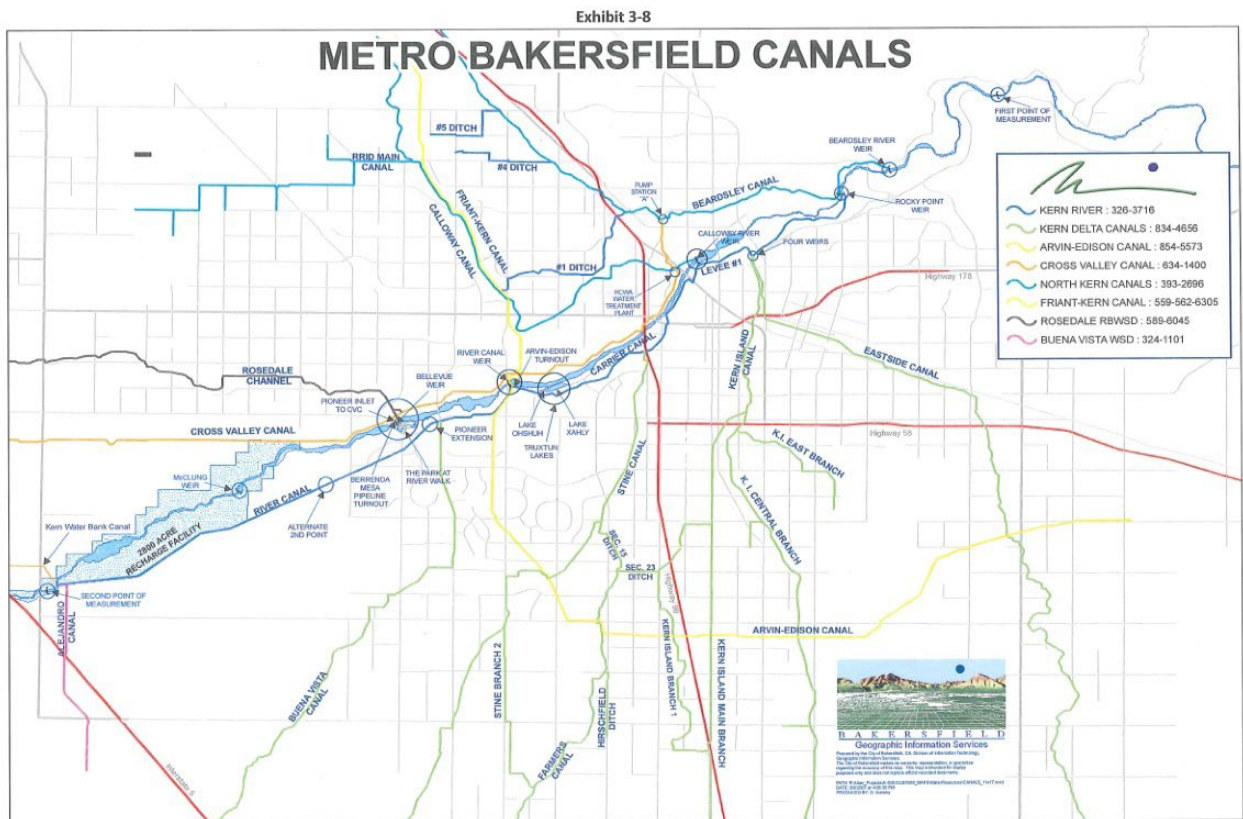
22 98. The CVC has 4 turnouts to the river channel along the route from Tupman to
23 Bakersfield. The River Canal Weir, the Bellevue Weir, and the McClung Weir all have ways of
24 accessing the CVC through these turnouts, making the water transferrable back to virtually anywhere
25 in the valley floor of Kern County.

26 99. The CVC can take water east back to the Calloway Canal, which then can take water
27 north to the same destinations serviced by the Beardsley and Calloway Canals that currently divert
28 water northeast of Bakersfield. There also is a connection between the CVC and the Arvin-Edison

1 Canal, allowing water to be transferred south to the same locations serviced by the Kern Island Canal.

2 100. If water was to consistently flow down the Kern River to the River Canal Weir, there
3 would be approximately eight additional miles of flowing river through the City. If water flowed to the
4 Bellevue Weir on the western edge of the City, there would be approximately two more miles (ten
5 additional miles total). If water flowed to the McClung Wier, there would be an additional 8 miles of
6 restored river, for a total of 18 miles of the Kern River that are typically dewatered due to the City's
7 diversions.

8 101. Adjacent to the Kern River's terminus at Buena Vista Lake, the river channel also
9 connects to the California Aqueduct with an intertie which could also be used to convey water north
10 where it can be put directly into the CVC. See Exhibit below, "Metro Bakersfield Canals."



102. Transfers and conveyances of water such as those suggested here have been performed before, for instance by North Kern Water Storage District in a deal with the City of Bakersfield, with the water flowing west to the River Canal Weir before being diverted into the CVC and then taken back east again, facilitated by the City to improve the aesthetics of the river through Bakersfield by

1 allowing additional water through river before diversion.

2 103. Because the river bottom is sandy, porous, and been largely dried up by decades of
3 diversions, there will be losses of water to the groundwater table, especially in the short term.
4 However, per local water manager assumptions, over 90% of this water is recoverable as groundwater,
5 serving an important need for groundwater recharge operations and SGMA compliance.

6 104. Although the extra distance and logistical considerations of changing the point of the
7 diversion may seem challenging to some end users (if not to the City, or to the public trust resources
8 that depend on a flowing river), water storage districts and the City have decades of experience
9 making water transfers to move water and cut down on transportation costs. For example, Buena Vista
10 Water Storage District may at times allow Kern Delta Water Storage District to divert its share of Kern
11 River water in exchange for money and an equal amount of State Water Project water from the
12 California Aqueduct, reducing Kern Delta's cost for pumping water uphill via the CVC.

13 105. As a public trust trustee, the City has a duty to determine the nature and extent of it
14 injuries to the public trust, and to greatest extent possible mitigate the injuries that it causes. The City
15 has not reviewed nor formally considered the impacts to public trust resources caused by its operation
16 of the Diversion Structures.

17 106. In February 2023, the City approved an agreement with a contractor for the preparation
18 of a Water Master Plan ("Master Plan") for the Kern River. The Master Plan will include the following
19 subjects:

- 20 a. Narrative introduction to the Kern River;
 - 21 b. Definition of the City's current water supplies and projected future supply,
22 including a summary of contractual obligations;
 - 23 c. Definition of the City's current and projected future water demands, including a
24 summary of contractual obligations;
 - 25 d. Development of sustainable water management priorities;
 - 26 e. Development of capital improvement projects;
 - 27 f. Summary of Kern River GSA, GSP, and introduction to SGMA requirements.
- 28

1 107. The Master Plan will be used for the following purposes:

- 2 a. Defining City goals and priorities for sustainable water management;
- 3 b. Providing knowledge transfer for City staff;
- 4 c. Capital improvement budget funding and phasing.

5 108. The Master Plan will not directly assess the harms to public trust resources caused by
6 the City's water diversions, nor will it analyze the status or needs of the public trust resources
7 impacted by the City's actions.

8 **FIRST CAUSE OF ACTION**

9 ***Writ of Mandate and/or Prohibition – Code Civ. Proc. §§ 1085 and/or 1103***

10 109. Plaintiffs incorporate and restate each and every paragraph contained herein as though
11 fully set forth herein.

12 110. If an agency refuses to perform a ministerial duty, an affected party may seek a writ of
13 mandate. A writ of mandate may be issued by any court to any corporation, board, or person, to
14 compel the performance of an act which the law specially enjoins, as a duty resulting from an office,
15 trust, or station. (Code Civ. Proc., § 1085, subd. (a).)

16 111. A writ of prohibition may be issued by any court to any corporation, board, or person,
17 commanding the party to desist or refrain from further proceedings and to show cause why the party
18 should not be absolutely restrained from any further proceedings in such action or matter. (Code Civ.
19 Proc. §§ 1103, 1104.)

20 112. Code of Civil Procedure, sections 1085 and 1103 are proper vehicles for compelling or
21 challenging a ministerial act of an agency. (*Morton v. Board of Registered Nursing* (1991) 235
22 Cal.App.3d 1560, 1566, fn. 5.)

23 113. The general rule is that a petitioner must show a special interest to be served or some
24 particular right to be preserved or protected through the issuance of the writ. (*Waste Management of*
25 *Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1232.) However, “where an
26 issue is one of public right, and the object of the action is to procure the enforcement of a public duty,
27 it is sufficient that the plaintiff be interested as a citizen in having the laws executed and the duty in
28 question enforced. [Citations omitted].” (*Id.* at p. 1233.) The exception promotes the policy of

1 guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the
2 purpose of legislation establishing a public right. (*Green v. Obledo* (1981) 29 Cal.3d 126, at page 144.)

3 114. A writ must be issued in all cases where there is not a plain, speedy, and adequate
4 remedy, in the ordinary course of law. (Code Civ. Proc., § 1086; *Brown v. Superior Court* (1971) 5
5 Cal.3d 509, 514.)

6 115. The issuance of a writ is required when an adequate legal remedy is not available and
7 the other requirements for a writ have been met. (*May v. Board of Directors* (1949) 34 Cal.2d 125,
8 133–134.)

9 116. “Two basic requirements are essential to the issuance of the writ: (1) A clear, present
10 and usually ministerial duty upon the part of the respondent [numerous citations omitted] and (2) a
11 clear, present and beneficial right in the petitioner to the performance of that duty [numerous citations
12 omitted].” (*Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1558.)

13 117. A writ of mandate will lie to compel a public official to perform an official act required
14 by law. (Code Civ. Proc., § 1085.) Alternatively, a writ of prohibition may issue to prevent improper
15 conduct. (Code Civ. Proc. § 1103.) A writ of mandate or prohibition will not lie to control an exercise
16 of discretion, i.e., to compel an official to exercise discretion in a particular manner. Mandamus may
17 issue to compel an official both to exercise their discretion (if they are required by law to do so) and to
18 exercise it under a proper interpretation of the applicable law. (*Common Cause v. Board of*
19 *Supervisors* (1989) 49 Cal.3d 432, 442.) To illustrate, depending on the facts of the moment, a writ of
20 mandate and/or prohibition may issue to prevent Defendant from conduct that will result in the drying
21 of the river, a writ of mandate may issue commanding Defendant to re-water the river, but in neither
22 event may a writ be issued to control the manner in which Defendant exercises its discretion as to how
23 it ensures that the river does not dry.

24 **Violations of California’s Public Trust Doctrine**

25 118. A real and present controversy exists between Plaintiffs and the City concerning the
26 obligations of the City to comply with the public trust doctrine.

27 119. The dewatering of the Kern River described herein is harming a navigable waterway. As
28 such, it is a continuing injury to the public trust. (*People v. Sweetser* (1977) 72 Cal.App.3d 278; *Envvtl.*

1 *Law Found. V. State Water Res. Control Bd.* (Cal. Ct. App. 2018) 26 Cal.App.5th 844, 860.)

2 120. The City has a clear ministerial duty to assess the impacts on public trust resources that
3 may be caused by its actions, including any actions that may adversely impact the public trust, before
4 taking those actions. (*FPL Group*, supra. 166 Cal.App.4th 1349, 1370.)

5 121. The City has violated and continues to violate its duties under the public trust doctrine
6 by diverting water from the Kern River through its operation of the Diversion Structures without
7 having considered the impacts of these diversions on public trust resources and considered feasible
8 mitigation and/or avoidance measures.

9 122. The City has violated and continues to violate its duties under the public trust doctrine
10 by diverting water from the Kern River through its operation of the Diversion Structures without first
11 considering feasible alternatives or mitigation measures to its injuries of public trust resources caused
12 by its operation of the Diversion Structures.

13 123. The City has violated and continues to violate its duties under the public trust doctrine
14 by diverting water from the Kern River through its operation of the Diversion Structures when feasible
15 alternatives or mitigation measures to its injuries of public trust resources caused by its operation of
16 the Diversion Structures are available.

17 124. The City has admitted no fault and will continue its conduct unless ordered by the Court
18 to do otherwise.

19 125. A writ of mandate compelling the City to assess the impacts on public trust resources
20 caused by the City's diversions, and to adopt feasible mitigation and/or avoidance measures, is
21 appropriate and necessary to avoid irreparable harm to Plaintiffs and the public.

22 126. A writ of mandate and/or prohibition commanding the City to desist or refrain from
23 diverting water from the Kern River in amounts that would result in injuries to trust resources pending
24 the completion of its assessment of the impacts on trust resources caused by the City's diversions is
25 appropriate and necessary to avoid irreparable harm to Plaintiffs and the public.

26 127. No other plain, speedy, or adequate remedy exists. The injury to the public trust cannot
27 be remedied or mitigated by an award of damages. There is no regulatory process for relief.
28

Violations of the Fish and Game Code

1
2 128. A real and present controversy exists between Plaintiffs and the City concerning the
3 obligations of the City to comply with Fish and Game Code, sections 5901 and 5937.

4 129. The City has a clear and mandatory duty under Fish and Game Code, sections 5901 and
5 5937 as alleged herein.

6 130. Fish exist in the Kern River above and below the Diversion Structures.

7 131. The City's operation of the Diversion Structures acts to prevent, impede, and tend to
8 prevent or impede the passing of fish up and down stream.

9 132. The City has violated, and continues to violate, its duty under Fish and Game Code,
10 section 5901 to not construct or maintain in any stream in District 3 1/2 any unpermitted device or
11 contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down
12 stream.

13 133. The City has failed, and continues to fail, its duty under Fish and Game Code, section
14 5937 to at all times allow sufficient water to pass through, over, or around the Diversion Structures to
15 keep in good condition any fish that may be planted or exist below the Diversion Structures.

16 134. The City's violations of its duties under the Fish and Game Code cannot be remedied or
17 mitigated by an award of damages. There is no regulatory process for relief.

18 135. A writ of mandate compelling the City to release water of sufficient flow and with
19 appropriate timing to keep fish downstream of the Diversion Structures in good condition is
20 appropriate and necessary to avoid irreparable harm to Plaintiffs and the public.

21 136. A preemptory or alternative writ of mandate and/or prohibition commanding the City to
22 desist or refrain from diverting water from the Kern River in any manner that reduces river flows
23 below a volume that is sufficient to keep fish downstream of said weirs in good condition is
24 appropriate and necessary to avoid irreparable harm to Plaintiffs and the public.

25 137. No other plain, speedy, or adequate remedy exists. The injuries caused by the City's
26 violations of the Fish and Game Code cannot be remedied or mitigated by an award of damages. There
27 is no regulatory process for relief.
28

SECOND CAUSE OF ACTION
Declaratory Relief – Code Civ. Proc., § 1060

1
2
3 138. Plaintiffs incorporate and restate each and every paragraph contained herein as though
4 fully set forth herein.

5 139. Declaratory relief is available to a party “who desires a declaration of his or her rights or
6 duties with respect to another...” (Code Civ. Proc., § 1060.)

7 140. “Declaratory relief operates prospectively, serving to set controversies at rest before
8 obligations are repudiated, rights are invaded, or wrongs are committed. Thus, the remedy is to be
9 used to advance preventative justice, to declare rather than execute rights. [Citation.]” (*Kirkwood v.*
10 *California State Automobile Assn. Inter-Ins. Bureau* (2011) 193 Cal.App.4th 49, 59.) In essence,
11 declaratory relief operates to declare future rights, not to address past wrongs. (*Canova v. Trustees of*
12 *Imperial Irrigation Dist. Employee Pension Plan* (2007) 150 Cal.App.4th 1487, 1497.)

13 141. A party seeking declaratory relief must show a very significant possibility of future
14 harm. (*Coral Construction, Inc. v. City and County of San Francisco* (2004) 116 Cal.App.4th 6, 17.)
15 In assessing whether declaratory relief is available, a court determines whether “a probable future
16 dispute over legal rights between parties is sufficiently ripe to represent an ‘actual controversy’ within
17 the meaning of the statute authorizing declaratory relief (Code Civ. Proc., § 1060), as opposed to
18 purely hypothetical concerns.” (*Steinberg v. Chiang* (2014) 223 Cal.App.4th 338, 343.)

19 142. A complaint for declaratory relief is legally sufficient if it sets forth facts showing the
20 existence of an actual controversy relating to the legal rights and duties of the parties and requests that
21 the rights and duties of the parties be adjudged by the court.

22 143. If these requirements are met and no basis for declining declaratory relief appears, the
23 court should declare the rights of the parties whether or not the facts alleged establish the plaintiff is
24 entitled to the favorable declaration. (*Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82
25 Cal.App.4th 592, 606.)

26 144. In review, the court must take all properly pled allegations as true. (*Preferred Risk*
27 *Mutual Ins. Co. v. Reiswig* (1999) 21 Cal.4th 208, 212, as cited in *Morillion v. Royal Packing* (2000)
28 22 Cal.4th 575, 579.) Such review considers whether or not the complaint “includes sufficient facts

1 that we must accept as true ‘to state a claim to relief that is plausible on its face’ as to each of
2 their causes of action. *Twombly*, 550 U.S. at 570.” (*Burchett v. Glob. SuperTanker Servs.* (E.D. Cal.,
3 Apr. 23, 2021) No. 2:19-CV-01812-MCE-JDP) [pp. 11].)

4 145. “There is a ‘distinction between action and inaction, or misfeasance and nonfeasance.’
5 (*Doe v. U.S. Youth Soccer Ass’n Incl.* (2017) 8 Cal.App.5th 1118, 1128.)

6 146. “Whether a particular statute [or regulation] is intended to impose a mandatory duty,
7 rather than a mere obligation to perform a discretionary function, is a question of statutory
8 interpretation for the courts. [Citation]” (*Creason v. State Department of Health Services* (1998) 18
9 Cal.4th 623, 631.)

10 147. The courts have Courts have concurrent jurisdiction in water right controversies.
11 (*Audubon*, supra, 33 Cal.3d 419, 426.)

12 148. Plaintiffs seek a declaration of their rights and the City’s duties as described herein.

13 **Violations of Article X of the California Constitution**

14 149. A controversy exists between Plaintiffs and the City concerning the obligation of the
15 City to comply with its duties under Article X, Section 2 of the California Constitution.

16 150. The City has a clear and mandatory duty to not waste or unreasonably use waters of the
17 Kern River and to not utilize an unreasonable method of use or method of diversion of the waters of
18 the Kern River.

19 151. The City is required to comply with the mandatory duties set out in the California State
20 Constitution, including those duties imposed under Article X, Section 2.

21 152. The City has asserted that “Water Code Section 106 provides that ‘the use of water for
22 domestic purposes is the highest use of water’ in California. Water Code Section 106.3 further
23 provides: ‘It is hereby declared to be the established policy of the state that every human being has the
24 right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and
25 sanitary purposes.’ Bakersfield’s diversion of water for municipal purposes therefore cannot be
26 deemed unreasonable, particularly in comparison to other uses.” (Memorandum of Points and
27 Authorities in Support of City of Bakersfield’s Demurrer to Plaintiffs’ Verified Complaint for
28 Declaratory and Injunctive Relief, dated February 2, 2023, page 13.)

1 153. Plaintiffs seek a declaration that Water Code, sections 106 and 106.3, nor any other code
2 section, do not nullify or override the City's duties under Article X, Section 2 of the California
3 Constitution.

4 **Violations of the Fish and Game Code**

5 154. A controversy exists between Plaintiffs and the City concerning the obligations of the
6 City to comply with its duties under Fish and Game Code, sections 5901, 5937, and 5948.

7 155. The City has asserted, in its Memorandum of Points and Authorities in Support of its
8 Demurrer [to Plaintiffs original complaint] dated February 2, 2023, that Fish and Game Code, sections
9 5901 and 5937 "do not apply to Bakersfield, the Kern River, or to the City's diversion and use of Kern
10 River water" (page 14.)

11 156. The City has asserted that Fish and Game Code, section 5901 "only applies to migratory,
12 or 'anadromous' fish, as the statute only applies to a "device or contrivance" that prevents or impedes
13 "the passing of fish up and down stream." (Memorandum of Points and Authorities in Support of City
14 of Bakersfield's Demurrer to Plaintiffs' Verified Complaint for Declaratory and Injunctive Relief,
15 dated February 2, 2023, page 14.)

16 157. The City has asserted that "only the California Fish and Wildlife Commission
17 ("Commission") and the California Department of Fish and Wildlife ("Department"), in their sole
18 judgment, can make the findings required to find a violation of Section 5937 (Fish & Game Code, §§
19 5937, 5931)". (Memorandum of Points and Authorities in Support of City of Bakersfield's Demurrer
20 to Plaintiffs' Verified Complaint for Declaratory and Injunctive Relief, dated February 2, 2023, page
21 14.)

22 158. The City has asserted that "Fish and Game Code Section 5937, moreover, 'is not a
23 reservation of water for the preservation of fish life, but is rather a rule for the operation of dams
24 where there will be enough water below the dam to support fish life, i.e., it is a standard for the release
25 of water in excess of what is needed for domestic and irrigation purposes so that what is available for
26 fish life shall not be wastefully withheld.'" (Memorandum of Points and Authorities In Support of City
27 of Bakersfield's Demurrer to Plaintiffs' Verified Complaint for Declaratory and Injunctive Relief,
28 dated February 2, 2023, page 15.)

1 159. The City has asserted that Fish and Game Code section 5948 “expressly does not apply
2 to ‘a dam for the storage or diversion of water,’” and “Section 5948 further only applies to structures
3 which will prevent the passing of fish up and down stream ‘as determined by the commission,’ and
4 Plaintiffs have not alleged the Commission has made such determination with regard to the Diversion
5 Structures in the Kern River.” (Memorandum of Points and Authorities in Support of City of
6 Bakersfield’s Demurrer to Plaintiffs’ Verified Complaint for Declaratory and Injunctive Relief, dated
7 February 2, 2023, page 15.)

8 160. Plaintiffs seek a declaration that Fish and Game Code, sections 5901, 5937, and 5948
9 apply to the City of Bakersfield.

10 161. Plaintiffs seek a declaration that Fish and Game Code, section 5901 applies to non-
11 anadromous fish.

12 162. Plaintiffs seek a declaration that the California Fish and Wildlife Commission and the
13 California Department of Fish and Wildlife do not have exclusive authority to make findings regarding
14 a violation of section 5937, and that this Court has concurrent jurisdiction to make such findings; and
15 that section 5937 is not “a standard for the release of water in excess of what is needed for domestic
16 and irrigation purposes so that what is available for fish life shall not be wastefully withheld.”

17 163. Plaintiffs seek a declaration that Fish and Game Code, section 5948 applies to any dam
18 that is not permitted by law and that will prevent the passing of fish up and down stream.

19 **THIRD CAUSE OF ACTION**
20 ***Injunctive Relief – Code Civ. Proc. §§ 526 and 527***
21 **Violations of Article X of the California Constitution**

22 164. Plaintiffs incorporate and restate each and every paragraph contained herein as though
23 fully set forth herein.

24 165. An injunction may be granted when “it appears by the complaint that the plaintiff is
25 entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the
26 commission or continuance of the act complained of, either for a limited period or perpetually.” (Code
27 Civ. Proc., § 526, subd. (a)(1).)

28 166. To the extent traditional mandate constitutes a proper remedy, the remedy of injunctive

1 relief is also proper. (*Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547,
2 1563. fn. 9.)

3 167. A controversy exists between Plaintiffs and the City concerning the obligations of the
4 City to comply with its duties under Article X of the California Constitution.

5 168. Because the provisions of Article X, Section 2 of the California Constitution are self-
6 executing, courts are empowered to enforce them even in the absence of implementing legislation.
7 (*Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist.* (1980) 26 Cal.3d 183, 198, [citing
8 *Joslin v. Marin Mun. Water Dist.* (1967) 67 Cal.2d 132, 141, and *Tulare Dist. v. Lindsay-Strathmore*
9 *Dist.* (1935) 3 Cal.2d 489, 568].)

10 169. The City has violated, and continues to violate, Article X, Section 2 of the California
11 Constitution through its unreasonable method of use and/or its unreasonable method of diversion of
12 the waters of the Kern River in a manner that is causing significant harm to the Kern River
13 environment.

14 170. The City's diversion of Kern River water at the Diversion Structures is an unreasonable
15 method of diversion because there readily exist feasible alternative points of diversion downstream
16 that would result in far less harm to the Kern River, its ecosystem, and public trust resources while still
17 providing all or substantially all the water currently diverted at the Diversion Structures for
18 agricultural users.

19 171. The City's diversion of Kern River water is an unreasonable method of use of the waters
20 of the Kern River because the City diverts more water from the Kern River than is reasonably required
21 for any beneficial use served by the City's or any other party's use in light of the harm to the Kern
22 River environment by the City's water diversions.

23 172. Plaintiffs seek an injunction prohibiting the City from diverting from the Diversion
24 Structures amounts of water required to: (a) provide for regular and consistent flows of the Kern
25 River; (b) to prevent unreasonable harm to trust resources; and (c) to provide for sufficient water for
26 fish habitat downstream of the Diversion Structures.

27 173. Plaintiffs have no plain, speedy, or adequate remedy in the ordinary course of law
28 because the City will continue to violate Article X, Section 2 of the California Constitution unless

1 compelled to comply by this Court.

2 **FOURTH CAUSE OF ACTION**

3 ***Writ of Mandate and/or Prohibition – Code Civ. Proc. §§ 1085 and 1103***

4 **Breach of Trustee Duties**

5 174. Plaintiffs incorporate and restate each and every paragraph contained herein as though
6 fully set forth herein.

7 175. A trust imposes a fiduciary duty on a trustee. The elements of a cause of action for
8 breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damage
9 proximately caused by that breach. (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 432-433.) Whether a
10 fiduciary duty exists, and the extent of that duty, is generally a question of law. Whether the defendant
11 breached that duty towards the plaintiff is a question of fact. (*Marzec v. Public Employees' Retirement*
12 *System* (2015) 236 Cal.App.4th 889, 915.)

13 176. The beneficiaries of the public trust are the people of California, and it is to them that
14 the trustee owes fiduciary duties. The trustee deals with the trust property for the beneficiary's benefit.
15 No trustee can properly act for only some of the beneficiaries – the trustee must represent them all,
16 taking into account any differing interests of the beneficiaries, or the trustee cannot properly represent
17 any of them. (*Bowles v. Superior Court* (1955) 44 Cal.2d 574.) This principle is in accord with the
18 equal protection provisions of the Fourteenth Amendment to the US Constitution.

19 177. A fiduciary relationship creates the highest duty of loyalty known to the law.
20 (Restatement (Third) of Torts § 16 (2020).)

21 178. The City has a fiduciary duty pursuant to Public Resources Code, section 6009.1 as it is
22 a city of the state and thus a grantee of lands by the federal government pursuant to California's
23 entrance into the Union as a state.

24 179. Alternatively, the City has a common law fiduciary duty as enumerated by Public
25 Resources Code, section 6009.1 as it is a division of the state and thus a grantee of lands by the federal
26 government pursuant to California's entrance into the Union as a state.

27 180. The City has breached its fiduciary duties by failing to act as a reasonably careful trustee
28 would have acted under the same or similar circumstances.

1 181. The fiduciary duty of loyalty encompasses cases where the fiduciary fails to act in good
2 faith.

3 182. The City has not made a good faith inquiry or effort to determine if the injury that it has
4 caused can be mitigated.

5 183. A trustee has a duty to keep clear and adequate records and accounts and make full
6 disclosure to the beneficiaries. Facts are especially important when public trust assessments must
7 include a balancing of needs between the beneficial use of environmental flows and the beneficial
8 claims of commerce.

9 184. The City has agreed to make diversions and to take beneficial use of Kern River
10 flows without considering the cumulative impact of these decisions on the public trust.

11 185. A trustee's duty requires erring on the side of caution where uncertainty exists. As the
12 level of uncertainty grows, the level of caution must also increase. Trustees can fulfill their duty of
13 caution by halting demands upon public trust resources until the uncertainty can be resolved.

14 186. The trustee's duty of furnishing timely information to beneficiaries, also expressed as a
15 duty to provide an accounting, has implicit within it the requirement that the information be complete,
16 accurate and understandable to the beneficiaries. This procedural duty is critical to the performance of
17 the preeminent substantive duty to protect public trust resources. It is axiomatic that we manage what
18 we measure.

19 187. The City has failed to perform its undertaking of disclosure.

20 188. As a beneficiary of the public trust, Plaintiffs were harmed by the City's negligence of
21 its trustee's duties. The City's conduct was a substantial factor in causing Plaintiffs' harm.

22 189. A writ of mandate compelling the City to release water of sufficient size and with
23 appropriate timing to provide reliable flows in the Kern River through the City, and to provide
24 sufficient fish passage and habitat in the Kern River through the City, and to remediate the public
25 nuisance caused by unlawful dewatering of the Kern River, is appropriate and necessary to avoid
26 irreparable harm to Plaintiffs and the public, harms which necessarily outweigh any comparable harm
27 to the City.

28 190. A writ of mandate and/or prohibition commanding the City to desist or refrain from

1 diverting water from the Kern River in any manner that reduces reliable flows in the Kern River
2 through the City, and to provide sufficient fish passage and habitat in the Kern River through the City,
3 is appropriate and necessary to avoid irreparable harm to Plaintiffs and the public, harms which
4 necessarily outweigh any comparable harm to the City.

5 191. Plaintiffs have no plain, speedy, or adequate remedy in the ordinary course of law
6 because the City will continue to breach its trustee duties unless compelled to comply by this Court.

7 **FIFTH CAUSE OF ACTION**

8 ***Injunctive Relief – Code Civ. Proc. §§ 526, 527***
9 **Public Nuisance – Civil Code §§ 3479 and 3480**

10 192. Plaintiffs incorporate and restate the preceding paragraphs as if set forth in full here.

11 193. The public nuisance doctrine aims at the protection and redress of community interests.
12 (*Citizens for Odor Nuisance Abatement v. City of San Diego* (2017) 8 Cal.App.5th 350, 358.)

13 194. “Unlike the private nuisance — tied to and designed to vindicate individual ownership
14 interests in *land* — the “common” or *public* nuisance emerged from distinctly different historical
15 origins. “The public nuisance doctrine is aimed at the protection and redress of *community* interests ...
16 which the courts have vindicated by equitable remedies since the beginning of the 16th century.”
17 (*People ex Rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1103.) “It is this *community* aspect of the
18 public nuisance, reflected in the civil and criminal counterparts of the California code, that
19 distinguishes it from its private cousin, and makes possible its use, by means of the equitable
20 injunction, to protect the quality of organized social life.” (*Id.* at p. 110. [Emphasis in original].)

21 195. “No lapse of time can legalize a public nuisance amounting to an actual obstruction of
22 public right.” (Civ. Code, § 3490.)

23 196. “Anything which ... unlawfully obstructs the free passage or use, in the customary
24 manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street,
25 or highway, is a nuisance.” (Civ. Code, § 3479.)

26 197. As set forth above, by its water diversions, the City unlawfully dewateres the Subject
27 Reach of the Kern River, obstructing the free passage and/or use in the customary manner of the Kern
28 River.

1 198. “A public nuisance is one which affects at the same time an entire community or
2 neighborhood, or any considerable number of persons, although the extent of the annoyance or
3 damage inflicted upon individuals may be unequal.” (Civ. Code, § 3480.)

4 199. Although the City knew that it was causing dewatering of the Kern River, no mitigation
5 for injury to the public trust by the City was undertaken and no action was taken to force amendment
6 of the rights and contractual agreements which govern the current diversion of Kern River water.

7 200. Liability for a public nuisance can arise both from the affirmative act of dewatering the
8 river by its extractions, and also from the failure to remedy the problem once it was recognized.

9 201. The City’s dewatering of the proximate reach of the Kern River was and is intentional
10 and unreasonable, or alternatively unintentional but negligent.

11 202. The City is subject to liability for the nuisance it has caused in violation of Civil Code,
12 sections 3479 and 3580.

13 203. The City knows or should know of the condition and the nuisance or unreasonable risk
14 of nuisance involved.

15 204. After a reasonable opportunity to take remedial actions, the City has failed to abate the
16 condition or to protect the public against it. (*Lelie Salt Co. v. San Francisco Bay Conservation* (1984)
17 153 Cal.App.3d 605, 619-620; Rest.2d Torts, § 839.)

18 205. An injunction may issue to enjoin the nuisance. (*People v. Truckee Lumber Co.* (1897)
19 116 Cal. 397.)

20 206. Plaintiffs are acting as a private attorney general seeking to enforce the public trust. A
21 private attorney general is not employed by the state but is a non-government actor who represents the
22 public’s rights or interests in court. “A party acting as a ‘private attorney general’ can raise issues that
23 are not personal to it.” (*Scenic Hudson Preservation v. Fed. Power* (2d Cir. 1965) 354 F.2d 608, 619-
24 620.)

25 207. The term private attorney general is meant to convey the concept that a private citizen
26 may stand in the shoes of the Attorney General, not in the sense of an attorney representing a party in
27 court, but in the sense of a government official advancing the public interest in a lawsuit. (*Associated*
28 *Industries v. Ickes* (2d Cir. 1943) 134 F.2d 694, 704, vacated by mootness, *Ickes v. Associated*

1 *Industries of New York State* (1973) 320 U.S. 707.) “[T]he private attorney general doctrine rests upon
2 the recognition that privately initiated lawsuits are often essential to the effectuation of the
3 fundamental public policies embodied in constitutional or statutory provisions ...” (*Graham v.*
4 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.)

5 208. Plaintiffs have standing to bring a claim for public nuisance as the conduct of the City
6 has prevented California citizens from the use, in a customary manner, of the Kern River. These
7 citizens, the community, have a special interest in the fish and wildlife within the Kern River. They
8 have suffered an injury in fact to their public trust interests in the fish and other wildlife of the Kern
9 River when the City unlawfully destroys these resources. These interests in fish and other wildlife
10 include not only the public trust property interest in the fish and other wildlife, but other recreational
11 and ecological values provided by the fish and other wildlife and protected by the public trust.

12 209. Further, one who is adversely affected by governmental action should have standing to
13 challenge that action. (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th
14 155, 165. “These liberal standing requirements have been applied to individuals acting in the public
15 interest to protect against effects of environmental abuse.” (*Laidlaw Environmental Services, Inc.,*
16 *Local Assessment Com. v. County of Kern* (1996) 44 Cal.App.4th 346, 354. See also *Animal Legal*
17 *Defense Fund v. Olympic Game Farm, Inc.* (W.D. Wash. 2019) 387 F. Supp. 3d 1202, 1206-07.)

18 210. “A private party can maintain an action based on a public nuisance ‘if it is specially
19 injurious to himself, but not otherwise.’ ... The damage suffered must be different in kind and not
20 merely in degree from that suffered by other members of the public.” (*Koll-Irvine Center Property*
21 *Owners Assn. v. County of Orange* (1994) 24 Cal.App.4th 1036, 1040.) “In order to recover damages
22 in an individual action for a public nuisance, one must have suffered harm of a different kind from that
23 suffered by other members of the public exercising the right common to the general public that was the
24 subject of interference.” (*Rincon Band of Luiseño Mission Indians of the Rincon Reservation Cal. v.*
25 *Flynt* (2021) 70 Cal.App.5th 1059, 1103.)

26 211. Plaintiffs have suffered damages of a different kind from that suffered by other members
27 of the public.

28 212. Plaintiffs have expended significant time and money: (a) educating the community,

1 elected officials, and public employees and officials about the value and possibility of a flowing Kern
2 River and the City's obligations regarding the river; (b) researching the City's operation of the
3 Diversion Structures; (c) researching the ecology, biology and social history of the river, including its
4 reach through the City; (d) participating at a high and expert level in public hearings and
5 administrative processes in opposition to the City's dewatering of the river; and, (e) working to
6 restore, protect, and improve habitat and recreational resources along the Kern River that continue to
7 be harmed by the lack of water in the Kern River channel.

8 213. The City's actions have caused and continue to cause Plaintiffs to divert significant
9 resources from their ordinary activities to engage in the activities described above; activities they
10 would not have to engage in but for the City's actions.

11 WHEREFORE Plaintiffs pray for relief as hereinafter set forth:

12 **PRAYER FOR RELIEF**

13 1. Declaratory relief stating that:

- 14 a. No statute, including Water Code sections 106 and 106.3, nullifies or overrides the
15 City's duties under Article X, Section 2 of the California Constitution.
- 16 b. Fish and Game Code, sections 5901, 5937 and 5948 apply to the City of Bakersfield.
- 17 c. Fish and Game Code, section 5901 applies to non-anadromous fish.
- 18 d. Neither the California Fish and Wildlife Commission nor the California Department of
19 Fish and Wildlife have exclusive authority to make findings regarding a violation of
20 section 5937; this Court has jurisdiction to make such findings.
- 21 e. Fish and Game Code, section 5937 is not "a standard for the release of water in excess
22 of what is needed for domestic and irrigation purposes so that what is available for fish
23 life shall not be wastefully withheld."
- 24 f. The City has a duty pursuant to Fish and Game Code, section 5937 to bypass sufficient
25 water by the weirs to keep fish downstream of the weirs in good condition.
- 26 g. Fish and Game Code, section 5948 applies to dams that are not permitted by law.
- 27 h. Fish and Game Code, section 5948 applies to dams that prevent or will prevent the
28 passing of fish up and down stream.

- 1 i. The City has a duty pursuant to Civil Code, section 3479 to cease dewatering the Kern
2 River below the Diversion Structures.
- 3 2. A writ of mandate and/or prohibition:
 - 4 a. Enjoining any and all activity that is in violation of the City's duties under the Public
5 Trust Doctrine;
 - 6 b. Enjoining any and all activity that is in violation of Fish and Game Code, sections
7 5901 and 5937;
 - 8 c. Enjoining any and all activity that is in violation of the City's duties under Public
9 Resources Code, section 6009.1 and/or the public trust duties enumerated therein;
 - 10 d. Enjoining the City from operating the Diversion Structures in any manner that
11 reduces river flows below a volume that is sufficient to keep fish downstream of the
12 Diversion Structures in good condition.
 - 13 e. Compelling the City to assess the impacts on public trust resources that may be
14 caused by its operation of the Diversion Structures;
 - 15 f. Compelling the City to avoid and/or mitigate, if feasible, any impacts to trust
16 resources caused by its operation of the Diversion Structures;
 - 17 g. Compelling the City to take such actions as required to bring its operation and
18 maintenance of the Diversion Structures into compliance with Fish and Game Code,
19 sections 5901, 5937 and 5948;
 - 20 h. Compelling the City to release water of sufficient volume and with appropriate timing
21 to provide reliable flows in the Kern River through the City, and to provide sufficient
22 fish passage and habitat in the Kern River through the City;
- 23 3. An order for preliminary and/or permanent injunctive relief:
 - 24 a. Enjoining the City from operating the Diversion Structures in such a manner that water
25 is diverted from the Kern River in excess of amounts required for: (a) regular and
26 consistent flows of the Kern River; (b) preventing unreasonable harm to trust resources;
27 and (c) providing sufficient water for fish habitat downstream of the Diversion
28 Structures;

1 b. Enjoining the City from operating the Diversion Structures in such a manner that
2 dewater the Subject Reach of the Kern River, obstructing the free passage and/or use
3 in the customary manner of the Kern River.

4 4. For costs of suit;

5 5. For attorneys' fees pursuant to law, including Code of Civil Procedure, section 1021.5 or
6 as otherwise provided;

7 and

8 6. For such other and further relief as the Court deems just and proper.

9
10 DATED: October 4, 2023

LAW OFFICE OF ADAM KEATS, PC

11 

12 _____
13 Adam Keats
14 *Attorney for Bring Back the Kern, Kern River
15 Parkway Foundation, Kern Valley Audubon,
16 Sierra Club, Center for Biological Diversity*

16 DATED: October 4, 2023

WATER AUDIT CALIFORNIA, INC

17 

18 _____
19 William McKinnon
20 *Attorney for Water Audit California*

1 **VERIFICATION**

2 I, Adam Keats, declare that:

3 1. I am an attorney duly admitted and licensed to practice before all courts of this State. I
4 am the attorney of record for the Plaintiffs in this action.

5 2. Plaintiffs have their places of business in Kern, Alameda, and Napa counties, and
6 therefore are absent from the county in which I have my office. I therefore make this verification on
7 behalf of Plaintiffs.

8 3. I have read the foregoing Second Amended Complaint and Petition for Writ of Mandate
9 and know the contents thereof; the factual allegations therein are stated upon my information or belief,
10 and as to those matters I believe them to be true.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct.

13 Executed this 4th day of October, 2023, in San Francisco, California.

14 LAW OFFICE OF ADAM KEATS, PC

15 By: 
16 _____

17 Adam Keats
18 *Attorney for Bring Back the Kern, Kern River*
19 *Parkway Foundation, Kern Valley Audubon,*
20 *Sierra Club, Center for Biological Diversity*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROOF OF SERVICE

I, Adam Keats, am over eighteen years of age and not a party to this action. I am employed in the county where the mailing took place. My business address is 303 Sacramento Street, 2nd Floor, San Francisco, CA 94111.

On October 4, 2023, I served the following document(s):

Verified Second Amended Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate

on the following parties, via electronic mail to the addresses listed below:

For Defendant City of Bakersfield:

Colin L. Pearce clpearce@duanemorris.com
Jolie-Anne Ansley jsansley@duanemorris.com
Ashley L. Barton abarton@duanemorris.com
Virginia Gennaro vgennaro@bakersfieldcity.us

For Kern Delta Water District:

Robert E. Donlan red@eslawfirm.com
Craig A. Carnes, Jr. cac@eslawfirm.com
Kevin W. Bursey kbursey@eslawfirm.com
Richard Iger richard@kerndelta.org

For North Kern Water Storage District:

Scott K. Kuney skuney@youngwooldridge.com
Brett A. Stroud bstroud@youngwooldridge.com
cc: kmoen@youngwooldridge.com

For Buena Vista Water Storage District:

Isaac S. Lawrence isaac@mhwslegal.com
James A. Worth jim@mhwslegal.com

For Rosedale-Rio Bravo Water Storage Dist.:

Daniel N. Raytis dan@bbr.law
Daniel M. Root droot@bbr.law

For Kern County Water Agency:

Amelia T. Minaberrigarai ameliam@kcwa.com
Nicholas A. Jacobs njacobs@somachlaw.com
Michelle E. Chester mchester@somachlaw.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 4th day of October, 2023, in San Francisco, California.



Adam Keats